IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19852 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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AMIT JIVANBHAI @ HARGOVINDAS PATEL - Petitioner(s)

Versus

THE STATE OF GUJARAT &2 - Respondent(s)

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Appearance :

MEENA VYAS for Petitioner(s) : 1,

RULE SERVED BY DS for Respondent(s) : 1 - 2.

GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 15/11/2005

ORAL JUDGMENT

1. Mr. Amit Jivanbhai alias Hargovindas Patel has filed this petition of habeas corpus under Article 226 of the Constitution of India for writ or any other order to quash and set aside the order of detention dated 15th April, 2005 passed by detaining authority under the provisions of the Gujarat Preventive of Anti-Social Activities Act, 1985 (hereinafter referred to as the 'PASA Act')which is illegal, null and void and also violative of Article 14, 19, 21 and 22 of the Constitution of India. The present petition is filed on 26th September, 2005 and this Court has issued **RULE**on 30th September, 2005.

2. Thereafter, the matter has been placed for hearing and final disposal. I have heard Ms. Meena Vyas, learned Advocate for the petitioner and Mr. Gohil, learned APP for the state in this behalf. The learned Advocate for the petitioner has invited my attention to the following facts,

3. Learned Advocate stated that the Police Commissioner, Ahmedabad City has passed order dated 15th April, 2005 by which he has directed that the petitioner be detained under the provisions of PASA Act in purported exercise of the power under Section 3(2) of the Act, allegedly with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order.

4. Thereafter, petitioner has been taken into custody. A copy of the said order has been produced by the petitioner. The authority has also supplied the grounds of detention in this behalf. Learned Advocate for the petitioner also invited my attention to the grounds of detention.

5. Learned Advocate for the petitioner stated that fifteen incidents-offences were registered -mentioned as grounds for

detention, out of which fourteen are regrading theft of 'Hero Honda' motorcycle and one is regarding theft of 'Santro' car. Learned Advocate for the petitioner, further, submitted that all these offences are alleged to commit under Section 379 of the Indian Penal Code which provides punishment for theft. Learned Advocated stated that under Section 379, in the case of 'theft' imprisonment of either description extended up to three years with fine or with both. So at the highest all these offences are of thefts only, and therefore, they cannot lead to a conclusion that detainee is a 'dangerous person' as defined under Section 2(c) of PASA act. The definition of dangerous person under Section 2(c) of PASA act is as under,

5.1 “2(c). dangerous person means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code (XLV of 1860) or any of the offences punishable under Chapter V of the Arms Act, 1959 (54 of 1959).”

6. Learned Advocate for the petitioner stated that it has been alleged that the petitioner is keeping harmful weapons and possesses criminal mind. However, there is only one such incident dated 22nd November, 2004 wherein it has been alleged that the petitioner had shown knife and has given threat to a person who was standing near 'Dada Saheb Na Pagla' bus stop. It has been also alleged that the petitioner with open knife tried to create panic and strike terror among the people and even disturbed normal vehicular traffic.

7. In view of the above, the detaining authority has passed the said order of detention. Learned Counsel for the petitioner has invited my attention to Section 3-which provides to pass order for

detaining certain persons wherein it has been stated as under,

7.1 “3(1)The State Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.”

8. Learned Advocate for the petitioner has relied upon judgment of the apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City and another reported in AIR 1989 SC 491, wherein the Hon'ble apex Court in Para 16 and 18 observed as under,

8.1 “(16) It is submitted by Dr. Chitale that the allegations which have been made by the said five witnesses against the petitioner are also very general in character and do not involve the question of public order. Counsel submits that there is a distinction between 'law and order' and 'public order'. The allegations made against the petitioner may give rise to a question of law and order but, surely, they have nothing to do with the question of public order. A person may be very fierce by nature, but so long as the public generally are not affected by his activities or conduct, the question of maintenance of public order will not arise. In order that an activity may be said to affect adversely the maintenance of public order, there must be materials to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of 'public order'.

8.2 (18) In the instant case, the detaining authority, in our opinion, has failed to substantiate that the alleged anti-social activities of the petitioner adversely affect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaaning of S.2(b)of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of S.3 of the Act, his activites as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. We have carefully considered the offences alleged against the petitioner in the order of detention and also the allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. The order of detention cannot, therefore, be upheld.”

8.3 Learned Counsel for the petitioner has relied upon the judgment of the apex Court in the case of Darpan Kumar Sharma alias Dharban Kumar Sharma Vs. State of Tamil Nadu and others reported in AIR 2003 SC 971 wherein in Para 5 and 6 the apex Court has observed as under,

8.4 “(5). Under the definitions in the Act it is stated that in the case of 'Goonda' the acts prejudicial to public order are 'when he

is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order'. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of the act upon the society; that a solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so as to bring the case within the purview of the Act providing for preventive detention.

8.5 (6) In the present case, the three alleged incidents to which the Commissioner of Police has referred to, are thefts arising under Section 379, I.P.C. and , therefore, there is no material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb even the tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality.”

9. The learned Advocate for the petitioner has also relied upon division bench judgment of this Court in the case of Ashokbhai Jivraj alias Jivabhai Solanki Vs. Police Commissioner, Surat &Others reported in 2001 (1)GLH 393 wherein division bench (Coram: C.K. Thakkar (as he then was) &K.M. Mehta,JJ.)in Para 22 observed as under,

9.1 “(22). So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in *Ram Manohar Lohia Vs. State of Bihar,*AIR 1966 SC 740 and reiterated from time

to time including the decisions referred to by us hereinabove, the case falls under the maintenance of “law and order” and not “public order”. The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstance, an order of detention could have been passed by the detaining authority for maintenance of “public order”, the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs.”

10. The learned Advocate for the petitioner has also placed reliance on the judgment of this Court in the case of Janak alias Jayesh Amrutlal Panchal Vs. State of Gujarat decided on 20th April, 2005 by this Court.

11. On behalf of the state, affidavit of Mr. K.R. Kaushik, Commissioner of Police, Ahmedabad city has been filed. Mr. Gohil, learned Advocate for the respondent has relied on statement of witness No.1. The learned Advocate for the respondent has invited my attention to affidavit page 3 to 5 wherein it has been stated as under,

11.1 “I say that in the present case, amongst the relevant materials I have carefully examined the documents relating to the 15 cases registered against the detenu and from those materials and from the statements of witnesses, it is clear that the detenu falls within the definition of “dangerous person” as defined u/s. 2(c) of the PASA Act. Therefore on carefully scrutinising, studying, examining and considering the materials placed before me including the papers pertaining to the above cases and statements of witnesses and after applying my mind to the facts of the case, I came to the conclusion after subjectively satisfying myself that

the detenu is a head-strong and dangerous person and his anti-social and criminal activities are directly or indirectly causing and are likely to cause harm, danger and alarm of insecurity among the general public or section thereof and he is thus disturbing the public order and public peace and there is also grave or wide-spread danger to life and property. Therefore, with a view to immediately prevent him from continuing his anti-social and criminal activities in any manner prejudicial to the maintenance of public order, after satisfying that such activities of the detenu cannot be curbed or prevented immediately by resorting to action under the ordinary law, as a preventive measure, I have passed the order of detention against the detenu with full application of mind and in compliance and in consonance with the provisions of the PASA Act as well as the Constitution of India and the said order is legal, valid and proper."

12. I have considered the submissions of the learned Counsel for the petitioner as well as respondent. However, in the present case as stated above fifteen alleged incidents to which Commissioner of Police, Ahmedabad city has made reference to are of theft (fourteen incidents are of theft of 'Hero Honda' motorcycles and one is regarding theft of 'Santro' car) and punishable under Section 379 of Indian Penal Code. Even, there is only one incident wherein it has been alleged that the petitioner had taken knife and beaten one person. Therefore, mere narration of these facts is, even, in its totality cannot lead to the conclusion that petitioner is a 'dangerous person'. Thus, all these offences registered or mentioned as the grounds of detention are not relevant to sustain the order of detention for the purpose of preventing petitioner so acting in any manner prejudicial to maintenance of public order. Therefore, there is no material on record which in its potentiality can show that the petitioner disturbed general peace and created

sense of terror or insecurity or disturbed normal tempo of life in the locality. This ground is enough to quash and set aside the order of detention made by respondent in this behalf.

13. The condition precedent for exercising such power the authority must satisfy that the activity of the person is prejudicial to the maintenance of the public order. Even on the basis of the allegations which have been leveled by the detaining authority and the grounds alleged it cannot be said that the activity carried out by the petitioner is prejudicial to maintenance of public order, and therefore, order of detention subject to the satisfaction arrived at by the detaining authority is contrary to law, and therefore, same is illegal and liable to be set aside.

14. The view which I am taking for setting aside the order of detention is also supported by judgment of the apex Court in the case of Darpan Kumar Sharma alias Dharban Kumar Sharma(Supra) as well as judgment of this Court in the case of Ashokbhai Jivraj alias Jivabhai Solanki (Supra). As all these offences which have been alleged to be of mere theft. Hence, the case of the petitioner squarely falls under the maintenance of 'law and order' and not 'public order'. Thus, subjective satisfaction arrived at by the detaining authority is illegal, null, void and not in accordance with law.

15. For the reasons recorded above, this Special Civil Application No. 19852 of 2005 is allowed. The impugned order of detention dated 15.04.2005 passed by Commissioner of Police, Ahmedabad City in exercise of powers under the provisions of Section 2(c) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short 'PASA Act') against the petitioner-Amit Jivanbhai alias Hargovindas Patel is ordered to be quashed and set aside. The petitioner-Amit Jivanbhai alias Hargovindas Patel is directed to be set at liberty

forthwith unless required in any other case. Rule is made absolute. This petition is disposed of accordingly with no order as to costs.

(K.M.MEHTA, J.)

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